

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF

THE CITY OF RICHMOND,
MISSOURI

Respondent

Proceeding under
Section 309(g)
of the Clean Water Act,
33 U.S.C. § 1319(g)

Docket No. CWA-07-2003-0091

COMPLAINT, NOTICE OF PROPOSED
PENALTY AND NOTICE OF
OPPORTUNITY FOR HEARING

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

2. This Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated Sections 301 and 402 of the CWA, 33 U.S.C. § 1311 and § 1342 and regulations promulgated thereunder.

Parties

3. The Complainant, by delegation from the Administrator of EPA to the Regional Administrator, EPA Region VII, is the Director, Water, Wetlands and Pesticides Division, EPA, Region VII.

4. The Respondent is the City of Richmond, Missouri (The City or Respondent).

Statutory and Regulatory Framework

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

6. The CWA prohibits the discharge of “pollutants” from a “point source” into a “navigable water” of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

7. To implement Section 402 of the CWA, EPA promulgated regulations codified at 40 C.F.R. Part 122. Under 40 C.F.R. Part 122.1, a NPDES permit is required for the discharge of pollutants from any point source into waters of the United States.

8. The Missouri Department of Natural Resources (MDNR) is the state agency with the authority to administer the federal NPDES program in Missouri pursuant to Section 402 of the Act, 33 U.S.C. § 1342, implementing regulations, and a Memorandum of Understanding dated October 30, 1974. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

Factual Background

9. The City is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), and is thus subject to its requirements.

10. The City owns and operates a Publicly Owned Treatment Works (POTW) including a sanitary sewage collection system, called the Richmond North Wastewater Treatment Plant (WWTP) located on Hines Street at the northeast edge of Richmond, Missouri, and operating under NPDES Permit Number MO-0021822. This POTW discharges pollutants as a point source into a tributary of the West Fork of the Crooked River in the Missouri River and West Central Tributaries Basin, a “Water of the United States”, as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7).

11. Respondent’s discharge of pollutants from its sanitary sewage collection system requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

12. The MDNR issued NPDES Permit No. MO-0021822 to the City for the North WWTP with the effective date of October 14, 1997, and the expiration date of October 13, 2002. MDNR reissued the permit for the North WWTP with an effective date of November 1, 2002, and an expiration date of October 31, 2007.

13. The permit for the North WWTP authorizes discharge only from outfall(s) with serial number(s) as specified in the application for said permit(s). NPDES Permit MO-0021822 allows discharge only from Outfall #001 at the Richmond North Plant.

14. The Standard Conditions, Part 1, Section B(1), to the NPDES Permit MO-0021822 require that all "discharges authorized herein shall be consistent with the terms and conditions of this permit. The discharge of any pollutant not authorized by this permit ... shall constitute a violation of the permit."

15. The Standard Conditions, Part 1, Section B(2), to the NPDES Permit MO-0021822 require that the "permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances."

16. NPDES Permit MO-0021822 requires that "there shall be no discharge of floating solids or visible foam in other than trace amounts."

17. Part C of the NPDES Permit MO-0021822 includes Special Conditions which require the following:

"4. General Criteria. The following water quality criteria shall be applicable to all waters of the state at all times including mixing zones. No water contaminant, by itself or in combination with other substances, shall prevent the waters of the state from meeting the following conditions:

a) Waters shall be free from substances in sufficient amounts to cause the formation of putrescent, unsightly or harmful bottom deposits or prevent full maintenance of beneficial uses;

b) Waters shall be free from oil, scum and floating debris in sufficient amounts to be unsightly or prevent full maintenance of beneficial uses;

c) Waters shall be free from substances in sufficient amounts to cause unsightly color or turbidity, offensive odor or prevent full maintenance of beneficial uses."

Violations

18. The facts stated in paragraphs 9 through 17 above are herein incorporated.

Count I

19. On or about January 2, 2001, January 29, 2001, February 8, 2001, May 23, 2001, May 31, 2002, and July 1, 2002, a U.S. EPA inspector documented frequent sanitary sewer overflows from the City's sanitary sewage system.

20. The City reported to MDNR pursuant to the requirement set forth in paragraph 15 above, which documented discharges from the City's sanitary sewage collection system for the months and from locations other than Outfall #001 as identified in Attachment A to this Complaint.

21. Respondent has discharged pollutants from its sanitary sewage collection system from the manholes and lift stations identified in Attachment A to this Complaint into Waters of the United States.

22. Respondent has violated Section 301(a) of the CWA, 33 U.S.C. § 1311 (a) in that Respondent has discharged untreated wastewater containing pollutants to the "Waters of the United States" at locations not authorized by an NPDES permit.

23. Respondent has violated Part 1, Section B, of its NPDES Permit(s), issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, by discharging untreated wastewater containing pollutants not in accordance with the terms and conditions of said permit.

Count II

24. On or about February 11, 2003, a MDNR investigator visually observed and documented sludge deposits to an unnamed tributary to West Fork of Crooked Creek.

25. Respondent discharged floating solids (sludge deposits) from the City's North WWTP into an unnamed tributary to West Fork of Crooked Creek.

26. The City failed to report to MDNR said event as set forth in paragraph 24 above as required by the Standard Conditions, Part 1, Section B(2), to the NPDES Permit MO-0021822.

27. Respondent has operated and maintained its sanitary sewage collection system in a manner which results in the presence of substances in sufficient amounts to cause the formation of putrescent, unsightly or harmful bottom deposits and cause unsightly color or turbidity, offensive odor in the receiving stream.

28. Respondent has operated and maintained its sanitary sewage collection system in a manner which prevents full maintenance of beneficial uses of the receiving stream.

29. Respondent has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a) in that Respondent has discharged floating solids (sludge deposits) to the "Waters of the United States" in violation of Respondent's NPDES Permit.

30. Respondent has violated Part 1, Section B(1), of its NPDES Permit(s), issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, by discharging floating solids (sludge deposits) not in accordance with the terms and conditions of said permit.

31. Respondent has violated Part 1, Section B(2), of its NPDES Permit(s), issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, by failing to report the discharge of floating solids (sludge deposits) to MDNR in accordance with the terms and conditions of said permit.

32. Respondent's operation and maintenance of its sanitary sewage collection system is a violation of special permit conditions 4(a), 4(b), and 4(c), as set forth in paragraph 17 above, and is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and implementing regulations. Respondent's discharge of sludge into "Waters of the United States" in violation of the NPDES permit is a violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. § 1311(a) and § 1342, and implementing regulations.

Relief

33. Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), authorizes the administrative assessment of civil penalties in an amount not to exceed \$10,000 per day for each day during which the violation continues, up to a maximum total penalty of \$125,000. Under the Civil Monetary Inflation Rule, 40 C.F.R. Parts 19 and 27, civil administrative penalties of up to \$11,000 per day for each day during which a violation continues, up to a maximum of \$137,500, may be assessed for violations of CWA Sections 301, 307, 402 and 405, 33 U.S.C. §§ 1311, 1317, 1342, and 1345 that occur after January 30, 1997.

34. Based on the foregoing Description of Violations, and pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), EPA Region VII hereby proposes to issue a Final Order Assessing an Administrative Penalty against the Respondent for the violation cited above, in the amount of \$70,000.

35. The proposed penalty is based upon the facts stated in this Complaint, the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, ability to pay, any prior history of such violation, the degree of culpability, economic benefit or savings resulting from the violation, and such other matters as justice may require.

36. The penalty proposed in this Complaint is based upon the best information available to EPA at the time that the Complaint was issued. The penalty may be adjusted if the

Respondent establishes bona fide issues of ability to pay, or other defenses relevant to the appropriate amount of the proposed penalty.

37. If Respondent does not contest the findings and assessments set forth above, Respondent may within thirty (30) days of receipt of this Complaint, make payment of the penalties assessed herein, remitted as follows:

Payment of the penalty \$70,000 may be made by certified or cashier's check payable to "Treasurer, United States of America" and remitted to:

EPA - Region VII
Attn: Regional Hearing Clerk
c/o Mellon Bank
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

The check should reference the name and docket number of this Complaint.

Respondent shall send a copy of the check to:

Cynthia L. Hutchison
Environmental Engineer
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66106

38. EPA has notified the state of Missouri regarding this proposed action by mailing a copy of this document to the Director, Department of Environmental Quality, Missouri Department of Natural Resources.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Answer and Request for Hearing

39. Respondent may request a hearing to contest any material fact contained in the Complaint above or to contest the appropriateness of the proposed penalty set forth therein. Such a hearing will be held and conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, a copy of which is enclosed herein.

40. To avoid being found in default, which constitutes an admission of all facts alleged in the Complaint and a waiver of the right to hearing, Respondent must file a written answer and request for hearing within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing. The answer shall clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with respect to which Respondent has any knowledge, or shall clearly state that Respondent has no knowledge as to particular factual allegations in this Complaint. The answer shall also state (a) the circumstances or arguments which are alleged to constitute the grounds of defense; (b) the facts that Respondent disputes; (c) the basis for opposing any proposed relief; and (d) whether a hearing is requested. Said answer shall be filed with the following:

Regional Hearing Clerk
United States Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101

41. Failure to admit, deny or explain any material factual allegation in this Complaint constitutes an admission of the allegation.

42. A hearing upon the issues raised by this Complaint and the answer may be held if requested by Respondent in the answer. If Respondent does not request a hearing, the Presiding Officer may hold a hearing if issues appropriate for adjudication are raised in the answer.

43. In any hearing on the proposed penalty for this Complaint, members of the public to whom EPA is obligated to give notice of this proposed penalty action, will have the right, under Section 309(g)(4)(B) of CWA, 33 U.S.C. § 1319(g)(4)(B), to be heard and present evidence on the merits of the proposed CWA penalty assessment. If no hearing is held, EPA will issue a Final Order Assessing Administrative Penalties pursuant to the CWA, and only members of the public who submitted timely comments on the proposed penalty assessment will have an additional thirty (30) days to petition to set aside the said Order and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioners' evidence is material and was not considered by EPA in the issuance of the Final Order.

44. If Respondent fails to file a written answer within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing, Respondent may be found in default. Such default by Respondent constitutes an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such factual allegations. A Default Order may thereafter be issued by the Presiding Officer and the civil penalties proposed herein shall become due and payable unless the record clearly demonstrates that the requested relief is inconsistent with the CWA.

Informal Settlement Conference

45. Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case, the proposed penalty, and the possibility of settlement. To request a settlement conference, please contact:

Julie Murray
Assistant Regional Counsel
United States Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101
Telephone 913/551-7448

46. Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written answer and request for a hearing must be submitted.

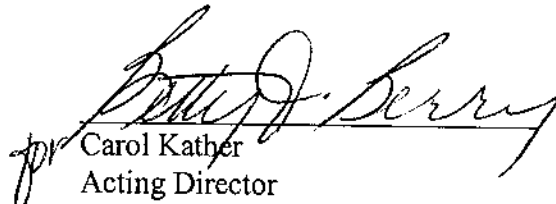
47. EPA encourages all parties against whom a civil penalty is proposed to pursue the possibilities of settlement as a result of informal conference. Any settlement which may be reached as a result of such a conference shall be embodied in a written Consent Agreement and Final Order issued by the Regional Judicial Officer, EPA Region VII. The issuance of such a Consent Agreement and Final Order shall constitute a waiver of Respondent's right to request a hearing on any matter stipulated therein.

48. If Respondent has not filed an answer within the thirty (30) day time period allowed by this Notice, the penalties proposed above may be assessed by the entry of a Default Order.

In the Matter of:
The City of Richmond, Missouri
Docket No. CWA-07-2003-0091

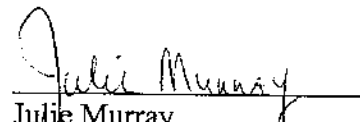
13/31/03

Date


Carol Kather
Acting Director
Water, Wetlands, and Pesticides Division
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101

3/31/03

Date


Julie Murray
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region VII
901 North Fifth Street
Kansas City, Kansas 66101

Enclosure: Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22.

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I hand delivered the original and one true copy of this Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Complaint and Notice of Opportunity for Hearing and a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22 to:

The Honorable Edward L. Swafford
Mayor of the City of Richmond
303 South Thornton Street
Richmond, Missouri 74085

3/31/03
Date

Amy Thomas